

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
STATESBORO DIVISION

ADRIAN JENKINS,

Plaintiff,

v.

JOSEPH HUTCHESON,

Defendant.

CIVIL ACTION NO.: CV614-081

CLERK
SOUTHERN DISTRICT OF GEORGIA
STATEBORO DIVISION

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U.S. DISTRICT COURT
SAVANNAH, GA
TALLIES
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ORDER

After an independent and *de novo* review of the entire record, the undersigned concurs with the Magistrate Judge's Report and Recommendation, to which Defendant filed Objections. Plaintiff filed a Response, Defendant filed a Reply, and Plaintiff filed a Surreply. In his Objections, Defendant contends that there is nothing in the Prison Litigation Reform Act's ("PLRA") exhaustion requirement which provides for the tolling of the statute of limitations while an inmate pursues his administrative remedies. Defendant is correct that the PLRA does not provide for the tolling of the applicable statute of limitations period. However, the PLRA does require that an inmate exhaust his available administrative remedies before he can file a cause of action in federal court. It would be inherently unfair for inmates if the applicable statute of limitations period did not toll while the inmates completed a process which is mandatory before those inmates can file suit in federal court.

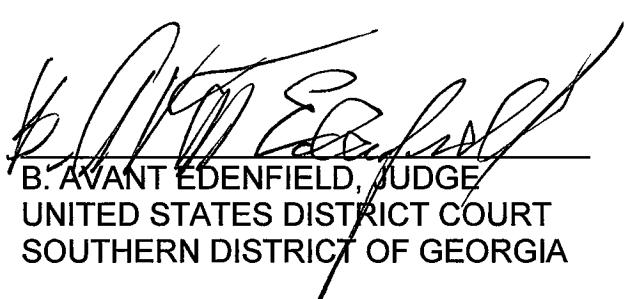
The Court notes Defendant's assertion that, because Internal Investigations is not a part of the grievance process, a referral to Internal Investigations is separate from

and effectively the end of the grievance process. However, this assertion overlooks the fact that Plaintiff contends that he filed a grievance, and the filing of a timely grievance could toll the applicable statute of limitations period. Moreover, Defendant's assertion is devoid of supporting documentation or legal authority.

The Court notes that Plaintiff submitted a printout of his grievance history. This printout reveals that Plaintiff filed Grievance Number 123257 on June 19, 2012, regarding physical force. As of January 6, 2015, the status of this grievance is "forwarded to Internal Investigation", with a date of June 21, 2012. (Doc. No. 41, p. 12). If this grievance concerns the events forming the basis of Plaintiff's Complaint, the grievance would have been filed timely. See Painter v. Thomas, et al., CV612-88, Doc. No. 46 (S.D. Ga.). It is plausible that Plaintiff exhausted the administrative remedies which were available to him and that the applicable statute of limitations period was tolled during the time Plaintiff pursued his administrative remedies.

Defendant's Objections are overruled. The Magistrate Judge's Report and Recommendation, as supplemented herein, is adopted as the opinion of the Court. Defendant's Motion to Dismiss is **DENIED**.

SO ORDERED, this 11th day of Feb, 2015.



B. AVANT EDENFIELD, JUDGE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA